IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

Crl.Rev.Pet.No. 3494 of 2007()

CC.1056/04 OF JFCM-II(MOBILE), KOTTAYAM
CRA.166/05 OF ADDL.SESSIONS JUDGE, FAST TRACK, ADHOC-II, KOTTAYAM

REVN. PETITIONER:

XAVIER THOMAS, THENGUMPALLIL
MANJOOR PO, MANJOOR VILLAGE
VAIKOM TALUK.

BY ADV. SRI.P.CHANDY JOSEPH

RESPONDENTS:

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1. ROY T. THARIAN, KANDAMCHIRA HOUSE
MEENADAM PO, KOTTAYAM

2. STATE OF KERALA, REPRESENTED BY THE
ADDL. PUBLIC PROSECUTOR, KOTTAYAM.

BY

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 27/09/2007 , THE COURT ONTHE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3494 OF 2007

Dated this the 27th day of September, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.1056/2004 on the file of the J.F.C.M.-II(Mobile), Kottayam challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause

(b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 1st respondent complainant by way of compensation under section 357(3) Cr.P.C. a sum of Rs.1,40,000/- (Rupees one lakh and forty thousand only) within five months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as

aforesaid, he shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner. The petitioner shall be released from prison forthwith with liability to pay the sum of Rs.1,40,000/- (Rupees one lakh and forty thousand only) within five months from today, failing which he shall undergo the default sentence unless his continued detention is found necessary in connection with any other case against him.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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